

CERTIFIED FOR PARTIAL PUBLICATION\*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LINDA LUZ GUEVARA,

Defendant and Appellant.

B163177

(Los Angeles County  
Super. Ct. No. BA222125)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
David Mintz, Judge. Affirmed.

Egan & Egan and Michael J. Egan, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General,  
Linda C. Johnson, Supervising Deputy Attorney General, and Scott A. Taryle,  
Deputy Attorney General, for Plaintiff and Respondent.

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\* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion  
is certified for publication with the exception of sections IIIB, IIC, and IIID.

## I.

### INTRODUCTION

Defendant and appellant Linda Luz Guevara was twice elected to the Huntington Park City Council even though she resided in Downey. In two different sets of election papers, she misrepresented where she lived and stated that she resided in Huntington Park. Appellant was convicted by jury of two counts of felony perjury by declaration (Pen. Code, § 118) and two counts of filing a false nomination paper or declaration of candidacy (Elec. Code, § 18203). Appellant appealed from the judgment.

Appellant contends: (1) the trial court erred in instructing the jury that the statute of limitations for the offense of filing a false nomination paper (Elec. Code, § 18203) was four years after discovery; (2) two of the convictions must be reversed because the statute of limitations had run prior to the commencement of the prosecution; (3) the trial court prejudicially erred in limiting cross-examination of a prosecution witness; and (4) the prosecution's failure to disclose a document in discovery (Pen. Code, § 1054.1) warranted a mistrial.

In the published portions of this opinion (sections I, II, IIIA, and IV) we address the first contention, which we conclude is unpersuasive. We hold that the statute of limitations for the offense of filing a false nomination paper (Elec. Code, § 18203) is four years after discovery. (Pen. Code, §§ 801.5, 803, subd. (c).) In the unpublished portions of this opinion (sections IIIB, IIIC, and IIID), we conclude that the other contentions are unpersuasive. We affirm.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *Initial facts.*

Appellant met Cipriano Terrazas (Terrazas) in 1990. They lived together prior to marrying in December 1996. Appellant and Terrazas ran a business

assisting landlords with evictions and preparing tax filings. During the pertinent years, the business was located on Florence Avenue in Huntington Park.

Alex, appellant's son from her first marriage, began attending school in the Downey Unified School District in 1990, when he was in kindergarten. Since the sixth grade, Alex participated in an educational program offered to a limited number of students. Residency of appellant, as Alex's parent and legal guardian, determined if Alex could participate in the program. Alex's school records contained a number of documents that had been submitted to the school district to verify appellant's residency and Alex's eligibility to attend Downey schools.

The documents contained in Alex's school file, other documents and testimony of uninterested third persons (such as landlords and neighbors), established that appellant did not reside in Huntington Park from 1990 through the time of trial. Rather, during this time, appellant resided on the following streets in Downey or the City of Lakewood:

- prior to 1991, Parrot Avenue, Downey;
- June 1991 -- 1994, Belshire Avenue, Lakewood;
- 1994 -- 1995, Fifth Street, Downey;
- 1996 -- 1998, Paramount Boulevard, Downey; and
- 1998 -- time of trial, Fostoria Street, Downey.

Appellant's mother, Dolores Silva (Silva), lived with her adult son (Louis) in a leased home on Walnut Street in Huntington Park. The lease was executed on December 10, 1996. The home had three bedrooms. Silva used one, Louis used one, and the third was used as a computer room/office.

One of appellant's clients owned a multiple unit complex on 61st Street in Huntington Park.

*B. The elections and the false documents.*

*1. Election procedures in Huntington Park.*

To run for the Huntington Park City Council, a person had to be domiciled and registered to vote in Huntington Park. A potential candidate was required to complete numerous documents, including a candidate's statement. A packet of materials (a candidate's kit) was given to all potential candidates. It referred to the various Government and Election Codes that discussed the law of residency and domicile.

To become a candidate for the Huntington Park City Council, a person had to obtain 20 qualifying signatures on a petition. The "circulator" was the person who circulated the nominating petition. The circulator had to be a resident of, and registered to vote in, Huntington Park. The circulator could be the candidate or another person. A declaration of circulator was on the back of the nominating petition. In the declaration of circulator, the circulator provided his or her address and signed the document under penalty of perjury, verifying that the circulator was a resident of Huntington Park. Underneath the declaration of circulator, but in a separate section on the same page, was an affidavit of nominee and oath or affirmation of allegiance. In the affidavit of nominee, the candidate delineated the office for which he or she was a candidate and how his or her name was to appear on the ballot. The nominee signed this section of the document swearing to defend the Constitution of the United States and the State of California and to faithfully discharge the duties about which he or she was about to enter. The nominee's signature was then notarized. Underneath the notary's signature, the candidate provided his or her telephone number and address, thereby stating that he or she resided in Huntington Park. Although a candidate could own two homes, e.g., a home in Huntington Park and a mountain retreat in another city, the candidate had to be domiciled and registered to vote in Huntington Park. The focus was on where the person actually resided.

Marilyn Boyett (Boyett) was the elected City Clerk. She met with all candidates each time they ran for office whether they were first time candidates or incumbents. Boyett provided each candidate with a candidate's kit, explained the documents, and discussed the election procedures and requirements, including the residence requirements. Boyett asked each candidate if he or she was a resident and registered voter of Huntington Park. If the candidate claimed to be a resident of Huntington Park, and a list provided by the County Registrar of Voters verified that information, Boyett accepted that the candidate was a Huntington Park resident.

Appellant ran in three elections. Each time, Boyett met with appellant and explained the election procedures, requirements, and nomination papers.

*2. The March 1997, election.*

Appellant ran for the Huntington Park City Council in the March 4, 1997, election. In her election documents, appellant stated her address was on Walnut Street in Huntington Park. Someone else served as the circulator of appellant's nominating petition. Appellant did not win the March 1997, election.

*3. The June 1997, election and the false March 1997, document (counts 1 and 3).*

Two days after losing the March 1997, election, appellant obtained papers to run for the Huntington Park City Council in a June 3, 1997, special election being held to replace a deceased council member. Boyett met with appellant and explained the paperwork, requirements, procedures, and the residency requirements. Appellant acted as her own circulator.

In the declaration of circulator dated March 6, 1997, appellant stated under penalty of perjury that she resided in Huntington Park. Underneath, in the affidavit of nominee section (dated March 7, 1997), appellant signed her name, she swore allegiance, and she stated that she resided on East Florence Avenue in

Huntington Park. Appellant's signature was notarized. Appellant made the statements in the affidavit of nominee even though she resided in Downey.

Appellant won the special election for a two-year term.

4. *The March 1999, election and the false December 1998, document (counts 2 and 4).*

Appellant ran for reelection in the March 2, 1999, election. Boyett again discussed with appellant the residency requirements. Appellant served as her own circulator. The declaration of circulator and the affidavit of nominee were both dated December 4, 1998. In the declaration of circulator, appellant stated under penalty of perjury that she resided in Huntington Park. In the affidavit of nominee, she had her signature notarized, swore allegiance, and stated that she lived on Walnut Street in Huntington Park. Appellant made these statements even though she resided in Downey. Appellant won the election.

*C. Appellant's defense.*

Appellant claimed she had not lied when she signed the March 1997, and December 1998, documents because at the time each document was signed she resided in Huntington Park. Appellant's defense was the following. Because she had been informed that she had to reside in Huntington Park to be on its City Council, she rented a room from her client on 61st Street in Huntington Park. Thereafter, she moved in with her mother and brother on Walnut Street in Huntington Park. When she was at her home on Walnut Street, she slept on an inflatable mattress. She did this because of her bad back. She spent weekdays in Huntington Park and joined her husband (Terrazas) and Alex in Downey on weekends. She argued this arrangement was not illegal because a Huntington Park elected official could have two homes. According to appellant, this plan permitted

her to be on the Huntington Park City Council and enabled Alex to be enrolled in Downey schools.<sup>1</sup>

*D. Discovery of the crimes and procedure.*

There were two separate investigations relating to whether appellant resided in Huntington Park. The second investigation was opened on March 5, 2001. It led to the charges against appellant.

On September 17, 2001, a complaint was filed and a warrant was issued for appellant's arrest. The subsequently filed criminal information charged the following: By filing and signing the declaration of circulator dated March 6, 1997, appellant committed felony perjury by declaration (Pen. Code, § 118, count 1) and appellant filed a false nomination paper (Elec. Code, § 18203, count 3). By signing and filing the declaration of circulator dated December 4, 1998, appellant committed felony perjury by declaration (Pen. Code, § 118, count 2) and appellant filed a false nomination paper (Elec. Code, § 18203, count 4).

Appellant was convicted by jury as charged. Sentencing was suspended and appellant was placed on formal probation for five years, with a 180-day jail term, which could be served through work furlough or electronic monitoring. Appellant appealed from the judgment. We affirm.

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<sup>1</sup> In finding appellant guilty, the jury rejected appellant's factual arguments that she resided in Huntington Park. (See Elec. Code, § 349 [defining "residence" and "domicile" and stating that for purposes of voting, residence is a person's domicile].) On appeal, appellant does not argue that the record lacks substantial evidence to support the convictions. (Cf. *People v. Mayer* (2003) 108 Cal.App.4th 403 [candidate for South Gate's city council arranged to use a South Gate's resident's mailing address; candidate's convictions for violating Penal Code section 118 [perjury], Election Code section 18203 [submitting false nomination paper], and Penal Code section 653f, subdivision (a) [solicitation of perjury] upheld.]

### III. DISCUSSION

A. *The statute of limitations for the offense of filing a false nomination paper (Elec. Code, § 18203) is four years after discovery.*

Appellant contends the trial court erred in instructing the jury that the statute of limitations for filing a false nomination paper (Elec. Code, § 18203)<sup>2</sup> was *four* years after discovery. In making this contention, appellant relies upon Penal Code section 801. Appellant's contention is unpersuasive because the proper analysis turns on the interplay of Penal Code sections 801.5 and 803, subdivision (c).

Penal Code section 801 provides, with exceptions not applicable to this case, that “prosecution for an offense punishable by imprisonment in the state prison shall be commenced within three years after commission of the offense.” For purposes of determining the applicable statute of limitations, “[a]n offense is deemed punishable by the maximum punishment prescribed by statute for the offense, regardless of the punishment actually sought or imposed.” (Pen. Code, § 805, subd. (a).) Elections Code, section 18203 is “punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years or by both the fine and imprisonment.” (Elec. Code, § 18203; see fn. 2.) Prosecutions are commenced when any of the following occur: when an indictment or information is filed, a complaint is filed changing a misdemeanor infraction, a case is certified to the superior court, or an arrest warrant or bench warrant is issued. (Pen. Code, § 804.)

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<sup>2</sup> Elections Code section 18203 reads: “Any person who files or submits for filing a nomination paper or declaration of candidacy knowing that it or any part of it has been made falsely is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years or by both the fine and imprisonment.”

Appellant’s argument that the statute of limitations for filing a false nomination paper is three years ignores Penal Code sections 801.5 and 803, subdivision (c).

Section 801.5 states that “Notwithstanding Section 801 or any other provision of law, prosecution for any offense described in subdivision (c) of Section 803 shall be commenced within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later.” (Stats. 1995, ch. 704, § 1 (Sen. Bill No. 734).)

Penal Code section 803, subdivision (c) states that crimes having as a material element fraud or breach of fiduciary duty shall be subject to a discovery rule. The statute provides a list of 11 examples of such crimes, the first of which includes forgery and falsification of a public record. The statute and its first three examples are as follows: “A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, *a material element of which is fraud or breach of a fiduciary obligation*, . . . or the basis of which is misconduct in office by a public officer, employee, or appointee, *including, but not limited to*, the following offenses: [¶] (1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee. [¶] (2) A violation of [Penal Code] Section[s] 72, 118, 118a, 132, or 134. [¶] (3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.” (Italics added.)<sup>3</sup>

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<sup>3</sup> Penal Code section 803, subdivision (c) reads:

“A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, *a material element of which is fraud or breach of a fiduciary obligation*, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee,

The list of 11 examples enumerated in Penal Code section 803, subdivision (c) is not intended to be exhaustive. Crimes not specifically delineated are included under its umbrella as long as the crimes have as their core, or a material element of the crime is, fraud or breach of a fiduciary obligation. (*People v. Bell* (1996) 45 Cal.App.4th 1030, 1060-1061; *People v. Fine* (1997) 52 Cal.App.4th 1258, 1266; cf. 1 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Defenses, § 223, pp. 589-590.)

*People v. Bell, supra*, 45 Cal.App.4th 1030 provides an example of the applicability of Penal Code section 803, subdivision (c). *Bell* involved a rent skimming operation. (*Id.* at p. 1039.) One of the defendants was found guilty of, among other crimes, multiple counts of filing or recording a forged instrument in violation of Penal Code section 115, subdivision (a). (*Id.* 1060.) The intent to defraud was not an element of Penal Code section 115 and it was not specifically listed as an offense covered by the tolling provision in Penal Code section 803,

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*including, but not limited to, the following offenses: [¶] (1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee. [¶] (2) A violation of Section 72, 118, 118a, 132, or 134. [¶] (3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code. [¶] (4) A violation of Section 1090 or 27443 of the Government Code. [¶] (5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code. [¶] (6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code. [¶] (7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code. [¶] (8) A violation of Section 22430 of the Business and Professions Code. [¶] (9) A violation of Section 10690 of the Health and Safety Code. [¶] (10) A violation of Section 529a. [¶] (11) A violation of subdivision (d) or (e) of Section 368.”* (Italics added.)

Our opinion is unaffected by the recent holding of *Stogner v. California* (2003) 539 U.S. 607 [123 S.Ct. 2446; 156 L.Ed.2d 544] [as applied to the facts before it, ex post facto principles barred application of subdivision (g) of Penal Code section 803 dealing with the statute of limitations for sex-related child abuse].

subdivision (c). (*Id.* at p. 1061.) *Bell* noted that Penal Code section 132, dealing with falsification and spoliation of evidence was directed at protecting the integrity and reliability of public records and it also did not have intent to defraud as an element. (*Ibid.*) However, Penal Code section 132 was specifically included as an offense covered by Penal Code section 803, subdivision (c)(2). *Bell* applied the discovery rule because the core purpose of Penal Code section 115 was “to protect the integrity and reliability of public records” (*ibid.*), which was within the purpose and scope of Penal Code section 803.

The discovery rule of Penal Code section 803, subdivision (c) was also applied in *People v. Fine*, *supra*, 52 Cal.App.4th 1258. In *Fine*, the defendants were charged with, among other crimes, violating Corporations Code section 25110, offering to sell and issue, and selling and issuing unqualified securities. (*Id.* at p. 1261.) Corporations Code section 25110 was not specifically included in Penal Code section 803, subdivision (c)’s list of crimes to which the discovery rule applied. However, it “involve[d] a deception upon the buyer by the unqualified securities seller.” (*People v. Fine*, *supra*, at p. 1265.) The fundamental purpose of Corporations Code section 25110 was to “ensure that a securities seller has made a full, complete and accurate disclosure of all information relevant and material to the buyer’s decision to purchase.” (*Ibid.*) The lack of adequate disclosure made fraud possible. (*Ibid.*) The fraudulent nature of the crime and the Legislature’s intent to apply the tolling provisions to any type of violations of Corporations Code section 25540 led the *Fine* court to conclude that the tolling provisions of Penal Code section 803 applied to the violation of Corporations Code section 25110. (*People v. Fine*, *supra*, at pp. 1265-1266.)

We are dealing with Elections Code section 18203. (See fn. 2.) It is designed to protect the integrity and reliability of publicly filed election documents and has at its core protections against fraud. It is designed to assure the

complete and accurate disclosure of information contained in nominating papers and declarations of candidacy. Thus, as in *Bell* and *Fine*, the discovery provisions of Penal Code section 803, subdivision (c) apply. Since a violation of Elections Code section 18203 falls within the ambit of Penal Code section 803, subdivision (c), Penal Code section 801.5 makes the statute of limitations for violating Elections Code section 18203 four years after discovery.<sup>4</sup>

Appellant cites to *People v. Bell, supra*, 45 Cal.App.4th 1030 to argue that even if the discovery rules apply here, the statute of limitations is *three* years after discovery, and not *four*. Appellant makes this argument because while *Bell* concludes that the crime of filing or recording a false instrument (Pen. Code, § 115, subd. (a)) falls within the confines of Penal Code section 803, subdivision (c), (*People v. Bell, supra*, at pp. 1060-1061), *Bell*'s further discussion is with regard to a *three*-year after discovery statute of limitations. (*Id.* at p. 1061.) *Bell* does so without considering Penal Code section 801.5.

The current version of Penal Code section 801.5 applies a *four*-year after-discovery statute of limitations to a broad spectrum of crimes. (Stats. 1995, ch. 704, § 1 (Sen. Bill No. 734).) Prior versions of the statute, the ones that would have been applicable in *Bell*, had a three-year after discovery statute of limitations applied to a limited number of crimes. Unlike the present statute, the prior versions of section 801.5 did not apply to all offenses punishable by imprisonment in the state prison, a material element of which was fraud or breach of a fiduciary

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<sup>4</sup> *People v. Bell, supra*, 45 Cal.App.4th 1030 includes a discussion about the standard of review for an alleged instructional error relating to the statute of limitations. (*Id.* at pp. 1065-1067.) *People v. Smith* (2002) 98 Cal.App.4th 1182 at pages 1193-1194 and *People v. Stanfill* (1999) 76 Cal.App.4th 1137 at pages 1153-1155 disagree as to whether this discussion in *Bell* remains accurate in light of subsequent United States Supreme Court and California Supreme Court authority. This is not relevant to our analysis and we need not take a position on the dispute.

obligation.<sup>5</sup> Since *Bell* did not discuss the interplay between Penal Code sections 803, subdivision (c) and 801.5, it may not be used as authority for the proposition appellant asserts. (*People v. Banks* (1993) 6 Cal.4th 926, 945 [cases may not be used for propositions not considered].)<sup>6</sup>

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<sup>5</sup> Penal Code section 801.5 was added by a 1986 legislative enactment and was amended in 1990 and 1994. (Stats. 1986, ch. 1324, § 2; Stats. 1990, ch. 587, § 1 (Sen. Bill No. 1782); Stats. 1994, ch. 841, § 5 (Assem. Bill No. 3751); Stats. 1994, ch. 1031, § 3 (Assem. Bill No. 1691).) The 1986, 1990, and 1994 versions contained a three-year after discovery statute. These versions of the statute applied either to insurance fraud, or to insurance and workers' compensation fraud.

Penal Code section 801.5 was amended in 1995 to its present form. The amendments increased the statute to *four* years after discovery and made the provision applicable to a broader range of crimes by amending the statute to state that "any offense described in subdivision (c) of Section 803" is included. (Stats. 1995, ch. 704, § 1 (Sen. Bill No. 734).)

Although *People v. Bell*, *supra*, 45 Cal.App.4th 1030 was decided in May 1996, the versions of the statute enacted before the 1995 amendments would have been applicable. In *Bell*, "[t]he last acquisition of a parcel of property which supported a charge of rent skimming was on October 1, 1989 . . . ." (*People v. Bell*, *supra*, at p. 1058) and the "forgery and false filings were merely aspects of [the] rent skimming scheme." (*Id.* at p. 1064.) The complaint was filed and an arrest warrant issued on the rent skimming offenses in June 1992. (*Id.* at p. 1063.) The forgery and false filing charges were brought into the case by an April 1993 amended information. (*Ibid.*)

<sup>6</sup> The recent case of *People v. Salas* (June 21, 2004, B159750) 119 Cal.App.4th 805, \_\_\_\_ [14 Cal.Rptr.3d 689, 697-698] (as mod. on den. of reh'g. on July 20, 2004, B159750 [2004 D.A.R. 8799]) states that the 1995 amendments to Penal Code section 801.5 applied the tolling provisions of Penal Code section 803, subdivision (c) to violations of Corporations Code section 25110 "by virtue of it being within the penalty language of [Corporations Code] section 25540, subdivision (a). (Fn. omitted.)" (*People v. Salas*, *supra*, at p. \_\_\_\_ [14 Cal.Rptr.3d at p. 698].)

*People v. Salas*, *supra*, also notes that the discussion in *People v. Fine*, *supra*, 52 Cal.App.4th 1258 to which we refer above "only was whether the tolling provision in Penal Code section 803, subdivision (c) applied to [Corporations

The trial court did not err by instructing the jury that the statute of limitations for the offense of filing a false nomination paper (Elec. Code, § 18203) was four years after discovery.

B. *The statute of limitations with regard to the charges emanating from the March 1997, document did not expire prior to the commencement of the prosecution.*

With regard to the false declaration of circulator executed on March 6, 1997, appellant was convicted in count 1 of felony perjury by declaration (Pen. Code, § 118), and on count 3 of filing a false nomination paper (Elec. Code, § 18203). Appellant contends the convictions for counts 1 and 3 must be reversed because the statute of limitations had expired prior to the commencement of the prosecution on September 17, 2001. This contention is not persuasive.

1. *Additional facts.*

There were two investigations relating to whether appellant resided in Huntington Park.

a. *The first investigation.*

The District Attorney's Office received an anonymous tip that appellant did not reside in Huntington Park. It is unknown when this tip came into the District Attorney's Office. In response to the tip, District Attorney's Office Investigator Henry Moraga was assigned on September 16, 1998, to investigate whether appellant resided at a specific address on Paramount Boulevard in Downey, rather than in Huntington Park. Moraga officially opened the investigation on October 15, 1998, although in September 1998, he tried to set up a meeting with appellant.

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Code] section 25110.” (*People v. Salas, supra*, at p. \_\_ [14 Cal.Rptr.3d at p. 698].) As *Salas* additionally noted, *Fine* was not called upon to consider if the statute of limitations was three or four years and further, the *Fine* prosecution commenced prior to the effective date of the 1995 amendment. (*People v. Salas, supra*, at p. \_\_ [14 Cal.Rptr.3d at p. 698].)

Moraga went to the County Recorder's Office. Two Registrar of Voters' documents signed by appellant were obtained. One showed appellant resided at a specific address on Parrot Avenue in Downey and the other reflected that appellant lived at a specific address on Walnut Street in Huntington Park.

Moraga met with the complainants on September 22, 1998.

On March 17, 1999, Moraga went to the Parrot Avenue address. The residents, who did not include appellant, said they had been living there for several years. To Moraga, this established that appellant did not reside at that address.

On April 19, 1999, Moraga went to the address on Paramount Boulevard. The house at that location was vacant and for sale. None of the neighbors were home. Moraga went back to the house a second time, but again did not find any neighbors around. The owner of the house (Joe Zonni) told Moraga by telephone that Terrazas had once lived there, alone. Zonni also stated he had seen appellant and a boy at that address about three times.

On May 28, 1999, Moraga interviewed appellant and explained to her the purpose of the investigation. Appellant stated she had married Terrazas in December 1996. Appellant also told Moraga the following. She had never lived on Paramount Boulevard in Downey. She insisted that she lived at the address on Walnut Street in Huntington Park. She refused to state why she and her husband lived separately.

Moraga went to the Walnut Street address and spoke to appellant's mother for about one-half hour or one hour.

At no time did Moraga learn that appellant might reside on Fostoria Street in Downey.

On August 12, 1999, Moraga wrote a final report to his supervisor. In January 2000, Moraga closed the investigation because he could not conclude that appellant lived at the address on Paramount Boulevard in Downey. This

conclusion was based upon his investigation and appellant's insistence that she lived on Walnut Street in Huntington Park.

b. *The second investigation.*

On March 5, 2001, District Attorney's Office Investigator Brian Bell was asked to investigate allegations that appellant lived in Downey. The allegations were based on an anonymous tip.

On March 12, 2001, in response to Bell's inquiry, the United States Postal Service indicated that appellant was not a known addressee on Florence Avenue in Huntington Park. However, the Postal Service told Bell that appellant was receiving mail at three specific locations on the following streets: (1) Walnut Street, Huntington Park; (2) Fostoria Street, Downey; and (3) Paramount Boulevard, Downey. Bell drove to the three specifically identified locations to determine what vehicles were parked at each site.

Early in the investigation, Bell went to the Huntington Park City Clerk's Office and spoke to Boyett. Around March 6, 2001, Bell was provided the December 4, 1998, nomination document in which appellant stated that she resided on Walnut Street in Huntington Park.

(1) *Surveillance.*

On several mornings, Bell saw vehicles connected to appellant at the address on Fostoria Street in Downey. Bell never saw any vehicles connected to appellant at the Walnut Street address. Before and after the searches discussed below, Bell had watched the Walnut Street residence at least five to ten times. He also interviewed neighbors who lived near that residence.

On Thursday, March 22, 2001, a surveillance was conducted of the Fostoria Street residence and at appellant's business address on Florence Avenue. A Mazda registered to Terrazas at the Fostoria Street address was seen at the business location. At 6:55 a.m., two males left the Fostoria Street home in a Mazda. Soon thereafter, one of the males returned. At 7:35 a.m., that male left

the home, driving a Chevrolet pick-up. At 9:55 a.m. that morning, appellant left driving the Mazda. She drove about 15 minutes, to her business address on Florence Avenue.

Another surveillance was conducted on March 27, 2001, beginning at about 2:30 p.m. At 7:55 p.m., appellant and a male driver left the Florence Avenue business location in the Mazda and drove away. The investigators stopped the surveillance for fear of detection because the Mazda was making a number of strange maneuvers and turns. Other investigators were at the Fostoria Street home, waiting to see if appellant would arrive there. Neither appellant nor the Mazda were seen at the Fostoria Street home that evening. By 11:00 p.m., the Mazda was not seen at the Fostoria Street residence, the Walnut Street home, nor at the Florence Avenue business address.

A third surveillance occurred on Wednesday, April 4, 2001. At 9:30 p.m., appellant was a passenger in a vehicle being driven by the same male as had been seen on March 22, 2001. Appellant and the male passenger left the business address on Florence Avenue in the Mazda and drove to the Fostoria Street residence address where the car was parked in the garage. Very soon thereafter, appellant was seen in the house. By approximately 10:00 p.m., appellant had not been seen leaving the Fostoria Street home and the surveillance ended.

(2) *Searches.*

On Thursday, May 24, 2001, search warrants were issued at six locations: (1) the residence on Fostoria Street in Downey; (2) the Walnut Street home in Huntington Park; (3) the Huntington Park City Clerk's Office; (4) the business on Florence Avenue in Huntington Park; (5) the Downey Unified School District Offices; and (6) Warren High School in Downey.

In addition to other items and observations, the following was observed or seized:

- At the Fostoria Street residence in Downey -

The search of the residence on Fostoria Street occurred a few minutes after 7:00 a.m. Appellant, Terrazas, Alex, Terrazas's daughter Lori Wade (Wade), and Wade's two children were present. Appellant was wearing a nightgown. Appellant's personal items (e.g., clothes and prescription medicine) were located. Also located were documents addressed to appellant (a car rental receipt and a school report card for Alex) or having her name (a Department of Motor Vehicles registration card and a receipt from a business establishment). Appellant and Terrazas left the house around 9:00 a.m.

- At the Walnut Street home in Huntington Park -

The search of the residence on Walnut Street occurred at 7:10 a.m. No one was home. Appellant arrived there between 9:00 and 10:00 a.m., apparently having driven there from the Fostoria Street residence. The Walnut Street residence had three bedrooms. Given the items in the bedrooms, it was clear that one was used by appellant's mother (Silva), one was used by appellant's brother (Louis), and the third was used as a computer room/office. The third bedroom did not contain a bed. Pieces of mail addressed to appellant, as well as a lease in the name of Silva and appellant were located. No prescription medicine bottles had appellant's name. Some utility bills had Silva's name, others bore appellant's name. A card file was in the breakfast nook. Appellant's name and various telephone numbers for her were on four cards.

After the search, the owners of the house were contacted and lease records obtained. A December 10, 1996, lease listed appellant, Louis, and Silva as the residents.

- At the Huntington Park City Clerk's Office -

The search of the Huntington Park City Clerk's Office yielded the March 1997, nomination papers, including the March 6, 1997, declaration of circulator. This was the first time Bell had seen this document.

- At the Downey Unified School District and Warren High School – Documents in Alex’s school file that had been submitted to the School District to verify that Alex and his legal guardian (appellant) both resided in Downey were obtained. These included, Department of Motor Vehicle records, a letter from a landlord, utility bills, and emergency contact cards. The documents showed that from the time Alex entered kindergarten, until the time the warrant was served, both Alex and appellant lived in Downey.<sup>7</sup>

(3) *Additional investigation.*

Bell met with his supervisors on a number of occasions. Between March 29, 2001, and April 20, 2001, Bell talked with Rosario Marin, a member of the City Council.<sup>8</sup> On April 5, 2001, and again on April 30, 2001, Marin sent documents to Bell relating to the investigation. Bell contacted the owners of the house on Walnut Street. Bell obtained a copy of the December 10, 1996, lease that listed appellant, Louis, and Silva as the residents.

2. *Additional procedure.*

The felony complaint was filed on Monday, September 17, 2001. On that date, an arrest warrant was issued, but held for 48 hours so appellant could turn herself in.

At the preliminary hearing, appellant moved to dismiss counts 1 and 3, emanating from the allegation that she had filed a false March 6, 1997, declaration of circulator. Appellant argued that the statute of limitations precluded prosecution of these charges. The motion was denied. After the People rested, appellant renewed her motion. The trial court denied the motion, finding that the

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<sup>7</sup> The only document in Alex’s school file indicating that appellant lived in Huntington Park was an August 19, 2002, document. This document was signed *after* investigating officers had served the search warrants.

<sup>8</sup> At the time of trial, Marin was the United States Treasurer. Appellant asserted the investigation was politically motivated.

evidence was in conflict and thus, the issue should be submitted to the jury. The jury was instructed on the law with regard to the statute of limitations.

### 3. *Discussion.*

As discussed above, the statute of limitations for filing a false nomination paper (Elec. Code, § 18203) is four years after discovery. Appellant concedes that the statute of limitations for perjury (Pen. Code, § 118) is four years after discovery. (Pen. Code, § 803, subd. (c)(2).) Appellant argues that the filing of the complaint on September 17, 2001, was untimely as to counts 1 and 3, as these crimes occurred on March 6, 1997, when she executed that declaration of circulator. (Pen. Code, § 804 [prosecution for an offense is commenced when an indictment or information is filed and also when arrest warrant or bench warrant is issued].) The resolution of the statute of limitations issue is dependent upon the discovery rule.

#### a. *The discovery rule.*

At trial, the prosecution must prove by a preponderance of the evidence that the charging document was filed within the prescribed period of time. (*People v. Zamora* (1976) 18 Cal.3d 538, 564-565, fns. 26 & 27.) The trial court may decide the issue if the evidence is uncontradicted. However, if there is conflicting evidence, the issue is to be resolved by the jury. (*People v. Lopez* (1997) 52 Cal.App.4th 233, 250.) “The jury’s findings on the ‘discovery’ issue [are] questions of fact and on appeal they are tested by the substantial evidence standard.” (*People v. Zamora, supra*, at p. 565.)

“ ‘[D]iscovery’ is not synonymous with actual knowledge. [Citation.]” (*People v. Zamora, supra*, 18 Cal.3d at pp. 561-562.) “The crucial determination is whether law enforcement authorities or the victim had actual notice of *circumstances sufficient to make them suspicious of fraud thereby leading them to make inquiries which might have revealed the fraud.*” (*Id.* at pp. 571-572, original italics.) The inquiry involves whether, “[j]udged by that standard of reasonable

diligence, [the evidence shows] that a prudent [person] apprised of the information . . . would have pursued a more vigorous inquiry.” (*Id.* at p. 572.) There is no “over-burdened investigator” exception to the discovery provision. (*Id.* at p. 573.) The defendant does not bear the burden of an improperly handled investigation. (*Ibid.*; see also, *People v. Lopez, supra*, 52 Cal.App.4th 233 [discussing discovery in case involving public official’s misappropriation of funds and perjury]; cf. *Cowan v. Superior Court* (1996) 14 Cal.4th 367 [discussing waiver of the statute of limitations].)

b. *There was substantial evidence to support the finding that the prosecution was timely.*

The jury was instructed that it could convict appellant on counts 1 and 3 only if it concluded that the “offenses were discovered within four years of the commencement of the action.” By convicting appellant on these counts, the jury impliedly found that the charges had been timely brought. Thus, our responsibility on appeal is to determine if there was substantial evidence to support the jury’s implied findings. (*People v. Zamora, supra*, 18 Cal.3d at p. 565.)

The facts before us are similar to those in *People v. Crossman* (1989) 210 Cal.App.3d 476. In *Crossman*, a deputy coroner stole gold coins from the home of a decedent. (*Id.* at p. 479.) Shortly after the decedent died in 1982, a neighbor, who knew about the gold coins, told the public guardian that he suspected defendant had taken the coins. The neighbor stated he had seen the defendant take small boxes from the home. The neighbor further stated that the defendant had told him that he did not find the coins in the home when the inventory was taken. The neighbor, an auctioneer, and the public guardian searched the home and found no evidence of the coins or that they had been taken. (*Ibid.*) The conservator dismissed the accusations as being unfounded, partially relying upon the defendant’s trusted position of senior deputy coroner. (*Id.* at pp. 479-480.) In 1986, the defendant was implicated in other estate thefts. This information led to a

re-examination of the earlier accusations. (*Id.* at p. 480.) *Crossman* held that the charges relating to the theft of the gold coins were timely. In 1982, it was known that gold coins were hidden, but there was nothing but speculation that defendant had stolen them. (*Id.* at p. 482.) The conservator did not have sufficient information from which he prudently would have been led to conduct further interviews, such as confronting the defendant. (*Ibid.*) Further, defendant's position of trust had to be considered as he was using his official position to lend credence to his false statements. (*Ibid.*)

Here, in September 1998, Investigator Moraga was given the task of discovering if appellant resided at a residence on Paramount Boulevard. When Moraga went to that location, he found an empty house. The owner (Zonni) told Moraga that Terrazas had lived there in the past, alone, and that appellant had not resided there. Moraga found, through the registrar of voters, that there were two other residences of interest – one on Parrot Avenue in Downey and one on Walnut Street in Huntington Park. The residents at the Parrot Avenue address convinced Moraga that appellant did not reside there. Appellant, a public official, and her mother insisted that appellant resided on Walnut Street in Huntington Park. Moraga had no information disputing appellant's statements. He had no information to lead him to believe that a crime had been committed. Moraga did not fail to investigate obvious discrepancies. Appellant's continued efforts to hide her crimes were successful. Moraga did not obtain the March 6, 1997, declaration of circulator and affidavit of nominee and he had no information suggesting appellant did not live in Huntington Park. After a reasonably conducted investigation, the investigation was formally closed in January 2000.

Substantial evidence supports the jury's implied findings that the first investigation conducted by Moraga did not commence the running of the statute of limitations. In the first investigation, Moraga was reasonably diligent in undertaking his assignment, but did not discover the commission of a crime. At

that time, law enforcement authorities possessed only speculative information that a crime had occurred.

It was only after the second investigation, conducted from March 2001 through May 24, 2001, that the authorities had actual notice of circumstances sufficient to make them suspicious of fraud thereby leading them to make inquiries to reveal those frauds. It was at this time that the false nomination papers were discovered. Since the second investigation began on March 5, 2001, the prosecution was timely as it was commenced by the filing of the felony complaint on September 17, 2001.

Appellant argues it is inappropriate to utilize the second investigation to commence the statute of limitations as the record does not disclose *when* the anonymous tip that started that investigation came into the District Attorney's Office. Our task is to determine if there was sufficient evidence, by a preponderance, to support the jury's findings. A reasonable inference to be drawn from the facts is that the second tip was not made until after the first investigation was closed in January 2000.

There is substantial evidence to support the jury's findings that the prosecution was timely.

*C. The trial court's evidentiary ruling with regard to cross-examination of a prosecution witness does not require reversal.*

The prosecution called to the stand Roy Duron (Duron), the owner of the Fostoria Street home. Appellant contends the trial court prejudicially erred in limiting cross-examination of Duron. We conclude that there was no error, but even if there was error, it was not prejudicial.

*1. Additional facts.*

This evidentiary issue involves two conversations Duron had with appellant. The prosecution introduced the contents of the second conversation; thereafter, upon the prosecution's motion, the trial court precluded appellant from

bringing in the contents of the first conversation. The proceedings were as follows.

The prosecution introduced a number of witnesses to establish when appellant had lived at the different locations. Duron was one of these witnesses. Duron testified to the following. He inherited the Fostoria Street home located in Downey in 1999. At the time, appellant and Terrazas were the tenants. Thereafter, during the second investigation, Investigator Bell asked Duron when appellant and Terrazas had moved into the home. Duron could not answer the inquiry and so he telephoned appellant and asked if she had a copy of the lease. In that conversation, appellant stated that she would have to look for the lease, but that she had moved into the home around November or December, 1998.

After the testimony about the second conversation was introduced, a hearing outside the presence of the jury was held. The prosecutor made a hearsay objection seeking to preclude the defense from asking Duron about a conversation he had had with appellant *prior* to the second conversation. (We refer to this as the *first or prior* conversation.)

An Evidence Code section 402 hearing was held. Duron testified to the following with regard to the first conversation. Prior to Duron being contacted by Bell, Duron and appellant were “chitchatting.” Appellant mentioned something about having two houses. Appellant explained that because of her elected position, “there was a requirement that she have residency in Huntington Park and she wanted her son to go to one of the schools in Downey . . . .” Duron thought appellant had stated that she lived in Downey two days per week and in Huntington Park five days per week. In the 402 hearing, Duron also provided information regarding the second conversation that had not been brought out in direct examination. Duron testified to these additional facts. Appellant’s statement that she had moved into the Fostoria Street home around November or December, 1998, was elicited from appellant by telephone, in the presence of Bell.

The only thing that was discussed with appellant in that conversation was the date appellant had moved into the Fostoria Street home.

In the Evidence Code section 402 hearing, appellant contended the first statement was admissible under section 356. The trial court disagreed and granted the prosecution's motion to preclude appellant from eliciting information from Duron about the first conversation.

Appellant challenges this evidentiary ruling.

## 2. *Discussion.*

Evidence Code section 356 states: “[1] Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party; [2] when a letter is read, the answer may be given; and [3] when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood may also be given in evidence.”

The first clause of this statute is not applicable here, as we are dealing with two different conversations. The second clause does not apply as we are not dealing with a letter. Thus, we focus on the third and last clause of Evidence Code section 356 permitting the introduction of a conversation if it is *necessary to make* another conversation understood.

Appellant's argument is as follows. When persons state that they have “moved into a residence,” the natural assumption is that they are stating that they moved “exclusively” into the home. When she told Duron that she had moved into the Fostoria home in November or December 1998, most persons (including Duron) would have understood her to be stating that she had moved *exclusively* into that home at that time. This would be an inappropriate conclusion because Duron previously had been informed (in the prior conversation) that she lived in two locations. Thus, the introduction of the first conversation was necessary to

make the second conversation understood and the trial court erred in prohibiting the introduction of the first conversation.

This argument is unpersuasive because it presumes too much. First, it is premised on an assumption, which may or may not be true. Second, the conversation that was introduced by the prosecution (appellant moved into the Fostoria home in November or December) related *solely* to the timing of her residency. No additional information was necessary to make that conversation understood. The prior conversation did not provide context for the second. Since the first conversation was not necessary to explain the second conversation the trial court correctly excluded it.

In any event, even if there was an evidentiary error, it was not prejudicial.

The documents (including school records and vehicle registration forms), testimony from uninterested third persons such as neighbors, and the information learned by the surveillance teams, established that during the relevant periods of time, appellant lived in Downey, not Huntington Park. Neither appellant nor her explanation of the events were credible. Although appellant argued she lived primarily at the Walnut Street house, the contents of that home showed otherwise. Appellant's mother used one bedroom, her brother used the second bedroom, and the third was used as a computer room/office. There was no bed in the Walnut Street house for appellant. Appellant asserted that because of a bad back, she slept on an inflatable mattress. However, she did not have an inflatable mattress at her "weekend home" on Fostoria Street. Appellant's prescription medicines, her personal belongings, and personal documents were in the Fostoria Street home. Appellant was seen coming and going from the Fostoria Street home. She could not explain the vast number of documents that showed her residence to be in

Downey. Appellant's explanations of the facts rendered her and her defense not believable.<sup>9</sup>

The trial court's evidentiary ruling does not warrant reversal.

*D. The prosecution's failure to provide discovery did not warrant a mistrial.*

Appellant contends the trial court prejudicially erred in denying her mistrial motion based upon a discovery violation. This contention is not persuasive.

*1. Additional facts.*

Appellant's defense was that she shared with her mother and brother the home on Walnut Street in Huntington Park, and that she spent weekends with her son Alex and her husband Terrazas in Downey. Appellant testified that Terrazas had never lived at the Walnut Street home.

On cross-examination, the prosecutor confronted appellant with her December 4, 1998, nomination papers. On these documents, Terrazas was listed as a person who nominated appellant. Terrazas listed his address on Walnut Street in Huntington Park. As the circulator, appellant signed, under penalty of perjury, that she had witnessed Terrazas sign the petition.

Soon thereafter, the prosecutor indicated he would be confronting appellant with a campaign finance document in which Terrazas, as appellant's campaign treasurer, listed his address on Walnut Street in Huntington Park. The document

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<sup>9</sup> For example, on a nominating petition, Terrazas signed that he resided on Walnut Street in Huntington Park. This was in direct conflict to appellant's defense that Terrazas lived in Downey. In answer to the question as to whether or not Terrazas's statement on the petition was true, appellant testified, "Yes, because, according to the election laws, you can vote sitting in a car. You can vote in a campground. You can vote -- if he chooses to use his business and he stayed there, if he says, that's where he stays 14 days prior to an election and 14 days after, he is entitled to vote there. And his choice is something that he chose to do."

was signed by appellant under penalty of perjury. (This conflicted with appellant's defense that Terrazas lived in Downey.) Defense counsel posed an ambiguous hearsay objection, which the trial court overruled. During further cross-examination, appellant tried to blame her campaign manager for the discrepancy. Appellant testified that the campaign finance document was blank when she signed it, and her campaign manager had filled in Terrazas's address.

Thereafter, appellant moved for a mistrial because the campaign finance document had not been disclosed in discovery. (Pen. Code, § 1054.1.) The prosecutor explained that this one document was part of a large volume of documents seized when the search warrant had been served on the City Clerk. Although the prosecutor had not specifically identified this document in discovery, the defense had been given a complete inventory of the documents obtained in the search and had been invited to review all documents in the prosecution's possession.

The trial court found a technical violation of Penal Code section 1054.1, because the campaign finance document was a "statement" by appellant, but also found it was not the usual type of statement made by a defendant. In denying the mistrial motion, the trial court reasoned that the document was not significant because appellant knew the case revolved around election documents, it was common knowledge that there were a number of documents filed in connection with elections, it was probable that appellant kept copies of the documents she submitted, the campaign finance document was a public record, and there was no surprise because appellant had been given an inventory of all documents seized. Further, the trial court indicated that to cure any potential harm it would be willing to use another type of sanction, such as a jury instruction.

## *2. Discussion.*

The trial court's rulings on motions for mistrials are reviewed for abuse of discretion. (*People v. Cox* (2003) 30 Cal.4th 916, 953.) To prevail on appeal on a

claim of a discovery violation, the defendant must show a reasonable probability that the result would have been different if the evidence had been disclosed.

(*People v. Bohannon* (2000) 82 Cal.App.4th 798, 806-807.)

Assuming, without deciding, that there was a discovery violation, the trial court did not abuse its discretion in denying the mistrial motion. The campaign finance document was cumulative as it was not the only election document reporting Terrazas's residence on Walnut Street in Huntington Park. The trial court did not err in denying the motion for a mistrial.

#### IV.

#### DISPOSITION

The judgment is affirmed.

CERTIFIED FOR PARTIAL PUBLICATION

ALDRICH, J.

We concur:

CROSKEY, Acting P.J.

KITCHING, J.